

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD HAYTER,
Petitioner,

v.

ERIC ARNOLD,
Respondent.

Case No. [16-cv-04220-JD](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 2, 5, 7, 9

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was ordered to show cause why this case should not be dismissed as successive. He has filed a response.

DISCUSSION

STANDARD OF REVIEW

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility

of constitutional error.” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

LEGAL CLAIMS

Petitioner presents many claims regarding his 2004 conviction. However, court records indicate that petitioner previously filed a habeas petition concerning the same conviction. *See Hayter v. Clark*, Case No. 09-cv-0457-JF. In that case, the Court granted a motion to dismiss as untimely and the Ninth Circuit denied petitioner’s motion for a certificate of appealability. Docket Nos. 27, 37 in Case No. 09-cv-0457-JF. “A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . .” 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

Petitioner presents arguments concerning his underlying claims but has not provided evidence that the Ninth Circuit has authorized a successive petition. The petition is dismissed but petitioner may refile the petition if he receives permission from the Ninth Circuit.

CONCLUSION

1. Petitioner’s motion for leave to proceed in forma pauperis (Docket Nos. 5, 7) is **GRANTED**. Petitioner’s motion for an extension (Docket No. 9) is **GRANTED** and his response is deemed timely filed.


1 2. The petition is **DISMISSED** for the reasons set forth above. A certificate of
2 appealability is **DENIED**.

3 3. The motion to appoint counsel (Docket No. 2) is **DENIED** because the petition is
4 dismissed.

5 **IT IS SO ORDERED.**

6 Dated: November 18, 2016

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JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD HAYTER,
Plaintiff,

v.

ERIC ARNOLD,
Defendant.

Case No. [16-cv-04220-JD](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 18, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Clifford Hayter ID: V32822
C.S.P. Solano
P.O. Box 4000
Vacaville, CA 95696

Dated: November 18, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO